

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE COMMISSIONER OF COMMERCE

In the Matter of the Certificates of
Authority of American Family Mutual
Insurance Company, American Standard
Insurance Company of Wisconsin,
American Family Life Insurance
Company, Wisconsin corporations, doing
business in the State of Minnesota

**ORDER CONCERNING
PROTECTIVE ORDER**

On March 31, 1997, the Respondent American Family Insurance Companies, filed a Motion to Lift or Construe the Protective Order issued in this matter. The Department of Commerce filed a response to the Motion on April 10, 1997. The Respondent filed a Reply Memorandum on April 16, 1997.

The Respondent is represented by Cory J. Ayling, Esq., and Kathleen M. Brennan, Esq. of the firm of McGrann, Shea, Franzen, Carnival, Straughn & Lamb, 2200 LaSalle Plaza, 800 LaSalle Avenue, Minneapolis, Minnesota 55402-2041. The Department of Commerce is represented by Joan C. Peterson, Assistant Attorney General, Michael A. Sindt, Assistant Attorney General, and Gregory Gisvold, Assistant Attorney General, Suite 1200, NCL Tower, 445 Minnesota Street, St. Paul, Minnesota 55101-2130.

Based upon the filings by the parties, and for the reasons set out in the Memorandum which follows:

IT IS HEREBY ORDERED that:

1. The Motion to Lift the Protective Order is denied.
2. The Department of Commerce shall appoint an independent auditor/investigator to review the facts alleged concerning Mr. Isom in the memoranda filed with this Motion.
3. The appointment of the auditor/investigator shall be subject to the reasonable approval of the Respondent.

4. The parties shall share the expense of the independent auditor/investigator equally.

5. The auditor/investigator shall proceed as outlined in the Memorandum attached and shall file its report to the parties on or before May 30, 1997.

Dated this 30th day of April 1997.

GEORGE A. BECK
Administrative Law Judge

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MEMORANDUM

The Respondent has filed a Motion to Construe or Lift the Protective Order entered in this matter. By an Order dated October 3, 1996, the Administrative Law Judge ordered, in part, as follows:

The Respondent, American Family Insurance Companies, including any of its employees, or persons acting on its behalf, shall not in any way coerce, intimidate or otherwise discourage any person, including its exclusive general agents, from cooperating and/or providing information or testimony to the Attorney General, the Commissioner of Commerce or the Administrative Law Judge in connection with this contested case proceeding.

The Respondent brings this motion in order to allow it to investigate a customer complaint concerning certain financial conduct by one of its exclusive agents, Bruce Isom. Mr. Isom testified as a witness in this contested case proceeding when subpoenaed by the Commissioner. Based upon the information it has received so far, the Respondent believes that an audit of the books and trust account of Mr. Isom is appropriate to determine whether any remedy or sanction is proper in this matter. The

Respondent also seeks clarification that it may conduct a similar investigation concerning any agent in the future. Clearly, the Respondent has a duty to ensure that its agents are not engaged in financial impropriety and, except for the extraordinary circumstances of this contested case proceeding, the Respondent would have authority to do so.

The facts involving the customer complaint appear to be that a policy on the commercial property of a client of Mr. Isom's had lapsed for nonpayment of the premium. When Mr. Isom contacted the client, the client requested that he be allowed to forward a deposit of 25 percent of the annual premium. Isom apparently received approval of the arrangement from American Family's regional office and the 25 percent check was received by Isom and forwarded to American Family in December of 1996. On January 24, 1997, Mr. Isom received a check payable to "American Family Ins. Group" for the remainder of the premium and placed the check for \$5,601.22 into his trust account. In late January, Mr. Isom forwarded a further \$1,000 to American Family before he left for vacation, after he noticed that the policy had not yet been reinstated. In early February 1997, the customer received a cancellation notice from American Family and contacted the American Family regional office to inform them that he had sent the full premium to Mr. Isom. When Mr. Isom returned from vacation he provided the full premium amount, a balance of \$4,601.22, to American Family on February 10, 1997, after being advised of the customer complaint.

The Department of Commerce argues that the Protective Order is still necessary to protect agents who testified at the hearing. The Department indicates that it has an open investigation concerning American Family's contacts with Isom and another agent who testified in the contested case hearing. The Department notes that the conduct concerning Mr. Isom took place prior to the beginning of the contested case hearing and the Department fears that the Respondent seeks to sanction Mr. Isom for his testimony rather than for any misconduct. The Department has conducted a preliminary investigation of the alleged conduct and, on the facts it has available, indicates that it cannot conclude that Mr. Isom acted illegally.

In its reply, American Family notes that it has an obligation to ensure compliance with the insurance laws of the state of Minnesota. It points out that agents have fiduciary duties to properly handle the large sums of money that pass through their hands. The Respondent states that an agent should not escape accountability by virtue of testifying in this proceeding or at the Legislature.

Although both the Respondent and the Department are responsible for ensuring appropriate conduct by insurance agents, it is unlikely in the context of this contested case proceeding, that an investigation of an agent who testified in this case by one party will be viewed as impartial or independent by the other. It is, therefore,

appropriate that the Department appoint an independent auditor to investigate the facts set out in the papers filed by the parties in connection with this motion. In order to ensure an independent investigation, the appointment of the investigator is subject to the approval of the Respondent, which shall not be unreasonably withheld. It is appropriate that the Department and the Respondent share the expense of this investigation. After completing an audit of Mr. Isom's books and trust account, the auditor shall report to the parties its findings and its conclusions as to whether or not Mr. Isom has violated any Minnesota statute or rule.

The Respondent also seeks an order to the effect that it is authorized to investigate any agent in the future as it normally would. As the Department points out, the Protective Order only applies to agents or other people who provided information or testimony in connection with this contested case proceeding. The Respondent is free to investigate any other agent. However, should the Respondent receive any other complaints concerning agents who testified or provided information concerning this proceeding, a procedure similar to the one ordered in regard to this motion would be appropriate. Such a procedure will offer both the Respondent and the Department the assurance that its investigation would not be criticized as lacking impartiality.

G.A.B.